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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/591,327

08/31/2006

Harumitsu Miyashita

2006\_1330A

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08/22/2008

WENDEROTH, LIND & PONACK L.L.P.

2033 K. STREET, NW

SUITE 800

WASHINGTON, DC 20006

EXAMINER

PSITOS, ARISTOTELIS M

ART UNIT

PAPER NUMBER

2627

MAIL DATE

DELIVERY MODE

08/22/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/591,327	<b>Applicant(s)</b> MIYASHITA ET AL.	
	<b>Examiner</b> Aristotelis M. Psitos	<b>Art Unit</b> 2627	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 August 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Information Disclosure Statement***

The submitted IDS documents have been reviewed and made of record.

### ***Claim Objections***

Claims 17-19 and 21-25 are objected to because of the following informalities: In particular, these dependent claims describe desired functional results for previously recited element/sections. However, they are not written in the standard means plus function language allowed/permitted by present USPTO practice, i.e., paragraph 4 under 35 USC 112. Appropriate correction is required. This examiner has no authority to suspend any statutory requirement/rules.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 17, 20 and 27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In particular, as recited in dependent claims 17 and 20, the DMA is to record/store appropriate opc information. Nevertheless, since the term DMA is a defined concept/terminology accepted and in standard use in this environment, the re-naming of such is not in keeping with such accepted terminology and would of course cause confusion.

With respect to claim 27, the examiner is not certain as to what the claim is attempting to define, i.e., a product, a process or a program - applicants' attention is drawn to MPEP§ 2106.01.

If applicants' are attempting to define a product, or a program then such is not permitted under present day guidelines as outlined above in the cited MPEP section.

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If the claim is drawn to a process, then such is not clearly defined.

Further elaboration is respectfully requested.

As far as the claims recite positive limitations, the following art rejections are made.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 15,16,18,19,21-23,25, 26 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by the acknowledged prior art referenced to in the disclosure at paragraphs 2-5 in the disclosure.

As interpreted by the examiner, claim 15 is met by the above noted acknowledge prior art, the recited items are described therein and hence this claim is met.

With respect to claim 26, the method limitation is met when the above system operates.

With respect to claim 28, obviously a control unit is present.

With respect to dependent claims 16,18,19,21-23 and 25, these functional desired results must inherently follow from the structure positively recited in their respective parent claim, else there are missing elements that yield such a desired result.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

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1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 17 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 5 and 19 as stated above, and further in view of either Lee, Kelly et al, or Kobayashi.

As interpreted by the examiner, the claims are attempting to re-define a dma as an opc area. Alternatively, these claims could be interpreted as merely a relocation of previously defined opc areas well known in this environment as taught by any of the above noted secondary references.

The renaming of a designated area is merely a change in name, and as well known, "... a rose by another name.....", is still a rose. Hence the renaming of an area on a record medium to another name is not of patentable weight.

Alternatively, the relocation of an opc area into another area, such as a dma area is merely a relocation of parts and obvious in view of the above noted secondary references. The relocation of parts is not of patentable weight.

3. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claim 15/23 as stated above, and further in view of Nakajima et al/ PGPUB 2003/0067998.

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With respect to this claim and its desired functional result, such is taught by the above cited/noted PGPUB presented by applicants. This examiner thanks applicants' diligence in citing such.

As noted in the abstract, the appropriate branch metric (for the desired jitter capability) is the thrust of this system.

It would have been obvious to modify the base system as relied upon above with the additional teaching from Nakajima et al, motivation is to yield a corrected signal.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Kelly et al is cited for both ropc and dma abilities, Morishima is cited as illustrative of ropc capabilities, and Kobayashi and Lee are cited as illustrative of opc and dma capabilities in this environment..

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aristotelis M. Psitos whose telephone number is (571) 272-7594. The examiner can normally be reached on M-Thur: 6:00 - 3:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William R. Korzuch can be reached on (571) 272-7589. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Aristotelis M Psitos  
Primary Examiner

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/Aristotelis M Psitos/

Primary Examiner, Art Unit 2627